

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Ex Parte No. 711**

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**234315**

**PETITION FOR RULEMAKING TO ADOPT REVISED  
COMPETITIVE SWITCHING RULES**

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**REPLY COMMENTS OF FLORIDA EAST COAST RAILWAY**

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**Dated: May 30, 2013**

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**REPLY COMMENTS OF FLORIDA EAST COAST RAILWAY**

Florida East Coast Railway, LLC (“FECR”) respectfully submits these Reply Comments in response to the Board’s July 25, 2012 order requesting comments on the National Industrial Transportation League’s (“NITL’s”) Petition for a rulemaking to consider changes to the Board’s rules governing shipper requests for reciprocal switching (the “*July 25 Decision*”).

The Opening Comments filed by NITL and other proponents of forced switching did not address in meaningful fashion the Board’s request for information regarding “whether increasing the availability of mandatory competitive switching would affect efficiencies or impose costs on the railroads.” *July 25 Decision* at 8.<sup>1</sup> NITL blithely asserted that its proposal would have “no adverse operational or network effects” on U.S. railroads. NITL Opening Comments at 59. Indeed, NITL suggested (without any supporting evidence) that requiring railroads to handle traffic via any route or interchange a shipper might choose “may increase network efficiency.” *Id.* at 58 (emphasis in original). Other shipper parties likewise minimized the potential impact of

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<sup>1</sup> The Opening Comments filed by the Association of American Railroads (“AAR”) and other railroad parties describe the adverse effects that forced switching would have on the efficiency and productivity of the rail network. *See, e.g.*, AAR Opening Comments, V.S. W. Rennie; NS Opening Comments at 71-79; UP Opening Comments at 22-53; KCS Opening Comments at 14-17.

forced switching on railroad operations.<sup>2</sup> Contrary to these rosy predictions, NITL's proposal would degrade the train services currently offered by FECR and undermine the substantial capital investments made by FECR, the State of Florida and the Federal government to improve the quality and efficiency of rail service to South Florida's growing ports.

FECR operates a 351-mile freight rail system that extends along Florida's east coast from Jacksonville to Miami. FECR transports a variety of commodities, including aggregates (crushed stone), automobiles, building materials, consumer products and orange juice in carload service. In addition, FECR provides intermodal service between South Florida and points throughout the United States via connections with both Norfolk Southern Railroad Company ("NS") and CSXT Transportation ("CSXT") at Jacksonville. FECR serves directly the port facilities at PortMiami, Port Everglades (Fort Lauderdale) and the Port of Palm Beach. In recent years, intermodal traffic growth has far outstripped FECR's carload business—in 2010, FECR handled 325,000 intermodal shipments, accounting for almost 80 percent of its total rail traffic.

FECR has worked closely with both PortMiami and Port Everglades to develop improved intermodal transportation service offerings designed to enhance the attractiveness of those facilities as ports of entry for cargo moving to points throughout the United States. FECR provides next day service from South Florida ports to points in Central and North Florida and

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<sup>2</sup> See, e.g., Highroad Consulting Opening Comments at 11 ("[t]he railroad industry has responded to change positively in the past. They are innovative and accomplished at identifying opportunities to improve the efficiency of operations and to grow their business."); American Chemistry Council Opening Comments at 5-6 (NITL's proposal "will not unduly harm freight railroads"); Interested Agricultural Parties Opening Comments at 20-21 (forced switching "would not significantly impact the Class I railroads"). The Alliance for Rail Competition ("ARC") conceded that it is "possible" that forced switching could lead to "unsafe operations or inadequate investment," but argued that "these dangers should not head up the Board's list of concerns in this proceeding." ARC Opening Comments at 9.

Georgia. Through its Class I connections at Jacksonville, FECR offers 2nd morning service to Atlanta and Charlotte, and 3rd and 4th morning service to Chicago, Dallas and Memphis.

FECR is also participating with Federal, State and local government agencies in making capital improvements to South Florida's freight rail lines and port facilities. Those projects include modernizing infrastructure, constructing on-dock rail links and developing expanded intermodal capacity. At *PortMiami*, funding totaling \$49 million provided by the port, FECR, USDOT and the State of Florida will create a direct connection between the port and FECR's intermodal yard. The project will "provid[e] direct cargo access to the national rail system" with the "convenience of port-to-door service with absolute lead times that match or exceed those of trucking, but with greater reliability and reduced carbon emissions."<sup>3</sup> The goal of this cooperative investment is to enable *PortMiami* to become "a major global logistics hub, allowing containerized cargo to reach 70% of the American population in 1-4 days."<sup>4</sup> At Port Everglades, FECR is participating in a public/private partnership that will invest \$52 million to construct a 42-acre Intermodal Container Transfer Facility that will handle international intermodal containers between ocean vessels and rail.<sup>5</sup>

These investments are critical to the ability of Florida's ports to meet the anticipated demand resulting from the completion of the Panama Canal expansion in 2015, which will enable larger container ships to call at Florida ports. The increased capacity and improved inland transportation made possible by recent investments will, in turn, enhance the State of Florida's

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<sup>3</sup> See *PortMiami*, Intermodal/Freight Rail Restoration, <http://www.miamidade.gov/portmiami/rail-restoration.asp> (last visited May 12, 2013).

<sup>4</sup> *Id.*

<sup>5</sup> See Broward County, Intermodal Container Transfer Facility Program, <http://www.broward.org/Port/MasterPlan/Pages/ICTFProgram.aspx> (last visited May 12, 2013).

competitiveness in the worldwide intermodal freight market. From FECR's perspective, participation in these and other infrastructure projects will improve its ability to provide efficient, cost-effective, rail service to and from South Florida.

The Federal government has been particularly supportive of these infrastructure investments. President Obama recently visited PortMiami to highlight the benefits of transportation infrastructure improvements for the U.S. economy.<sup>6</sup> During his visit, President Obama observed that investment in rail infrastructure is necessary because America "still [has] too many rail lines that are too slow and clogged up."<sup>7</sup> In praising the infrastructure projects underway in South Florida, the President stated that "there are few more important things we can do to create jobs right now and strengthen our economy over the long haul than rebuilding the infrastructure that powers our businesses and our economy . . ." *Id.*

NITL's forced switching proposal would adversely affect the efficiency and reliability of FECR's intermodal rail service, thereby undermining the premise upon which recent investments in South Florida's port facilities and rail infrastructure were undertaken. Rather than operating separate carload and intermodal trains, FECR provides "scheduled" train service for both carload and container shipments in mixed-consist trains that depart at regular intervals. This operating

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<sup>6</sup> In advance of the President's visit, White House spokesman Josh Earnest noted that "[t]he port of Miami is a major center of commerce, an example of the critical infrastructure improvements that are being undertaken to remain competitive in the global marketplace using the types of combined investments from the federal government, state governments and local governments, and private investors." See Lucy Madison, *Congressional battles ongoing, Obama heads to Florida to talk jobs, economy*, CVS News (Mar. 29, 2013), available at [http://www.cbsnews.com/8301-250\\_162-57576867/congressional-battles-ongoing-obama-heads-to-florida-to-talk-jobs-economy/](http://www.cbsnews.com/8301-250_162-57576867/congressional-battles-ongoing-obama-heads-to-florida-to-talk-jobs-economy/).

<sup>7</sup> The White House Office of the Press Secretary, Remarks by the President on Rebuilding America Partnership in Miami, Florida, Mar. 29, 2013, available at <http://www.whitehouse.gov/the-press-office/2013/03/29/remarks-president-rebuilding-america-partnership-miami-florida>.

practice allows FECR to offer more frequent departures and “truck-like” transit times between Miami and Jacksonville to both merchandise and intermodal customers.

The primary location at which FECR interchanges traffic with both NS and CSXT today is at Jacksonville. FECR also maintains interchanges with CSXT at two locations in the vicinity of Miami and at West Palm Beach. FECR also has an interchange with South Central Florida Express (“SCXF”) at Fort Pierce, FL. (SCXF’s lines, in turn, connect with CSXT at Sebring, FL.) NITL’s proposal would permit shippers to redirect carload traffic that FECR handles between Jacksonville and Miami today to alternate routings via FECR’s connections at West Palm Beach, Fort Pierce and Miami.

Requiring FECR mixed-consist trains to stop enroute to switch cars at intermediate interchange locations would make it impossible for FECR to maintain its current practice of providing frequent departures with reliable transit times for intermodal shipments moving to and from South Florida ports. FECR would have to choose between stopping mixed-consist trains at intermediate points to perform switching and holding intermodal shipments until a sufficient number of containers were available to fill out a dedicated intermodal train. Either alternative would result in a degradation of the scheduled, frequent and reliable train service that has enabled FECR to grow its intermodal business and justified the recent investments in South Florida’s ports to attract additional container traffic.

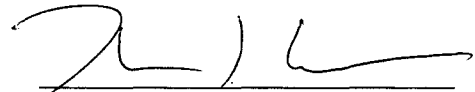
In short, implementing NITL’s proposal would undermine the efforts of FECR, as well as Federal, State and local governments, to increase capacity and develop more efficient, reliable intermodal services. In particular, it would create a strong disincentive to making further infrastructure investments that are critical to South Florida’s ability to compete in the global marketplace. Inflicting such harm on South Florida’s economy—for the sake of giving a limited

number of shippers access to a rate remedy in addition to those already available to them—  
would be contrary to the public interest.

### **CONCLUSION**

For the reasons discussed above, FECR strongly urges the Board not to adopt NITL's  
forced switching proposal, and to maintain its current competitive access rules.

Respectfully submitted,



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